Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
Implementation of the Local Competition	)	CC Docket No. 96-98
Provisions in the Telecommunications Act	)	
of 1996	)	

COMMENTS OF THE MICHIGAN PUBLIC SERVICE COMMISSION STAFF

May 15, 1996

Michigan Public Service Commission
6545 Mercantile Way
Lansing, MI 48911

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I. Introduction and Summary of Substantive Arguments:

On April 19, 1996, the Federal Communications Commission (FCC) issued a Notice of Proposed Rulemaking (NPRM) requesting comment on proposed rules to implement Section 251 of the Communications Act of 1934, as amended by the Telecommunications Act of 1996 (1996 Act). This Section of the 1996 Act deals specifically with local competition provisions. In compliance with the NPRM, the Michigan Public Service Commission Staff (Michigan Staff) herein responds to a number of issues raised by the FCC. As required in its NPRM (¶ 291),[1] a summary of the Michigan Staff substantive arguments urges that only a broad framework of requirements be adopted by the FCC to assure implementation of the 1996 Act. Many alternative specific solutions should clearly be permitted because they would permit recognition of a myriad of differing circumstances faced in various states but would still assure swift implementation of the federal Act and the onset of local competition. Comments on specific issues raised in the NPRM follow.

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[1] As required by the NPRM, ¶ Numbers contained in parenthesis refer to paragraph numbers of the FCC Notice to which Michigan Staff is responding.

II. General Comments

Michigan Staff shares FCC's belief that a coordinated Federal-State approach is required to assure a smooth implementation of the 1996 Act. We recognize that the 1996 Act provides FCC with a legitimate role to prescribe certain policies that are cognizant of local policies and concerns.

However, particularly with regard to the local competition issues implicit in § 251, application of the following precepts is critical. Broad general national principles should be articulated only where required. A "one-size-fits-all" policy should be avoided to: (1) ensure that competition develops expeditiously in all markets, (2) avoid regulatory gridlock, and (3) minimize unnecessary litigation. FCC policies and rules should complement, not impede or duplicate, State efforts to foster local competition. States must retain flexibility to implement competition and develop pricing policies consistent with local market conditions.

In ¶26, the NPRM suggests that the FCC will pay "due regard to work already done by the states that is compatible the [1996 Act's] ... pro-competitive intent." However, the myriad tentative conclusions and proposals suggest that the FCC is considering a detailed and very prescriptive uniform national approach intended to bind the states. In addition, the FCC tentatively concludes that the reservation of State jurisdiction contained in § 152(b) has no application to § 251 and 252.

Michigan Staff disagrees with both of these suggestions. An examination of the history

and text of the 1996 Act clearly indicates the intent of Congress that the FCC take a broad approach to rules that implement the 1996 Act and that § 152(b) apply to all of Part II of Title II. We submit that the prescriptive Federal overlay suggested by the NPRM is not supported by the text and history of the 1996 Act and is inappropriate from a policy perspective. Even if the 1996 Act could be interpreted to permit such prescriptive rules, the limited time for FCC action suggests that the prudent course would favor the adoption of broad and flexible rules.

Many states have either already issued rules and orders related to interconnection and unbundling or will do so before the FCC's rule is issued in August. Unlike any generic Federal approach, each one of these proposals was developed or is being developed with the existing State regulatory framework and local market conditions in mind. Most, if not all, of these proposals, can claim consistency with the broad terms of the 1996 Act. Competition is already moving forward in states that have attractive markets without FCC rules. Specific rules to guide these states are unnecessary an may be counterproductive. Other states are moving to assure that they meet the duties imposed by the 1996 Act. To avoid blocking the progress that states have made, the FCC's rules should be very general. In passing the 1996 Act, it is unlikely that Congress intended to halt or retard pro-competitive state initiatives or encourage additional litigation over state compliance issues.

III. Scope of the FCC's Regulations (¶ 27)

Michigan Staff strongly supports FCC specification of only a broad set of rules that

must, at a minimum, be incorporated in local interconnection and resale arrangements to assure compliance with the 1996 Act. Where a number of alternatives may in fact be acceptable under the 1996 Act, Michigan Staff would support FCC designation of a recommended solution, or, at a minimum, a discussion of the advantages and disadvantages of each. However, selection of an alternative as the required solution, when a number of alternatives would be clearly permissible under the 1996 Act, should be rejected.

First, as acknowledged throughout the NPRM, a myriad of alternative solutions have already either been agreed to by interconnecting parties or have been adopted by various state commissions, which clearly promote local competition and are in compliance with federal law.

Second, identifying the "only correct" solution to each issue will severely constrain the introduction of local competition, cause further delays and potentially require unneeded expenditures as providers are required to back-track and arrange for a different type of interconnection than they have already put into place. Michigan is far along the road in its support of a competitive local exchange marketplace. The first license for the competitive provision of basic local exchange service was approved by the Michigan Commission more than eighteen (18) months ago and since then licenses have been granted to five (5) other providers. The first order compelling local interconnection between providers and specifying the rates, terms and conditions for this interconnection was approved more than a year ago in

February, 1995.[2] Michigan law, which codified requirements for local interconnection, was enacted in November, 1995.[3] These advances must not be clouded now with further uncertainty.

Third, a number of alternatives must be available to respond to differing degrees of competition in various states and geographic areas of the country, differing customer needs and desires, differing rate structures for other existing services and differing indirect effects on non-competing providers and customers. Providers must first have an opportunity to negotiate mutually agreeable forms of interconnection which are generally permissible under both state and federal law. State commissions must then have the ability to take a number of considerations into account should agreement between providers not be reached. A maximum degree of flexibility will have the greatest potential for furthering competition while allowing the ability to recognize public interest considerations that must be taken into account.

As will be discussed in more detail below, Michigan law and Michigan Public Service Commission orders are largely in compliance with the 1996 Act, are fully supportive of competition and incorporate general principles for interconnection to achieve that end. In the few instances where a conflict exists, it is usually a case that the one law is more

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[2]See Attachment 1, the February 23, 1995 Michigan Public Service Commission Order in Case No. U-10647 establishing and approving interconnection arrangements between City Signal, Inc, and Ameritech Michigan.

[3]Attachment 2 is Michigan's 1991 Public Act 179 as amended by 1995 Public Act 216 (Act 179). Interconnection requirements are specified in Article 3A of this Act.

encompassing than the other (rather than in direct conflict with the other) in the paradigm it adopts. Therefore, in Michigan Staff's opinion, the principles which permit the greatest potential for introduction of competition should prevail.

IV. National Standards (¶ 33/34)

The technical standards that currently apply to incumbent LECs should be applied to new LECs. All network providers should be required to follow: (1) the North American Dialing Standards, (2) Part 68 Standards for modular jacks and terminal equipment, (3) service quality standards, and (4) interconnection standards. These should be the minimum standards today to evolve as technology and market needs change. Minimum standards must be fashioned to include access to vital services (e.g. access to 911, Telecommunications Relay Service, etc.)

V. Reciprocal Interconnection Obligations (¶ 45)

For the most part, Michigan law imposes interconnection obligations only on providers serving more than 250,000 end-users in the state.[4] Although there is no obligation for the small provider to establish interconnection arrangements with other providers under Michigan's Act 179, there is no prohibition against such interconnection either. Smaller local exchange providers (LECs), whether competing or non-competing providers, may establish

[4]Sec. 351 of Act 179.

local interconnection arrangements, but they are not obligated to do so.

As discussed in Section II above, Michigan Staff believes that only broad parameters for the implementation of the 1996 Act should be specified by the FCC. Michigan Staff also believes that the terms of interconnection which have to-date been specified by the Michigan Commission are in compliance with the 1996 Act. Michigan Staff also believes, however, that if existing interconnection agreements are not in compliance with the 1996 Act and the FCC's broad implementation standards, that these agreements should be renegotiated within a specific, short-term timeframe (¶ 48). Only in this manner can discriminatory treatment be prevented among the providers seeking interconnection. If existing agreements are in compliance with the 1996 Act, they should be submitted for approval. If not in compliance with the 1996 Act, then modifications should be negotiated and the original agreement with modifications should then be submitted for approval as provided for in the 1996 Act.

With respect to infrastructure requirements, new entrants should not be required to mirror incumbent LEC networks, in terms of exchange boundaries, switching hierarchies, etc. However, certain technical and operational requirements, including unbundling, interconnection, access to shared network functionalities, and number portability are needed to ensure that the networks operate in a seamless fashion.

With respect to local service requirements, existing carriers and new entrants should be required to provide 911, operator services, directory assistance, and connection to interexchange carriers. If the incumbent local exchange carrier provides 911/E911 and

telephone relay services, it should make them available to other carriers on terms comparable to those it imposes upon itself and other providers.

VI. Interconnection (¶ 49)

Michigan Staff agrees that a static definition of technically feasible points for interconnection must be avoided (¶ 56). Instead, in a generic interconnection proceeding in Michigan which is now nearing completion, Michigan Staff proposed a procedure for obtaining further unbundled local network components.[5] In developing its proposal on this issue, Michigan Staff relied in part on early procedures adopted by the FCC regarding requests for availability of components in the Open Network Architecture proceedings. In summary Michigan Staff's proposed procedure permits an opportunity for negotiated settlement between the parties prior to formal Michigan Commission intervention. Only in the event of an impasse does the Michigan Commission become involved. Under the procedure, any LEC is required to respond to a request for an unbundled network element for any exchange where a competitive license to provide service has been granted. The request for further unbundling, however, must include an intent to purchase statement, and, at a later date, a commitment to purchase statement which would obligate the requesting party to purchase if the unbundling occurs. Unbundling for unbundling's sake, therefore, should not be an issue. The procedure also permits refusal of the unbundling request given technical or economic justification.

[5]See Attachment 3.

Under this procedure, states could determine if more points for interconnection are feasible and the LEC to whom the request is made would have the burden to justify if the further unbundling does not occur (¶ 58). The level of technological development in a state's geographic area as well as the degree to which competition is developing can therefore be taken into account by each state in moving forward toward a more competitive environment.

Michigan law also prohibits the establishment of inferior interconnections (¶ 63). Specifically, any provider of basic local exchange service, whether large or small, incumbent or newly licensed, may not:

> "Refuse or delay interconnections or provide inferior connections to another provider."[6]

Such a standard is fully consistent with the principles of the 1996 Act and all LECs are bound by this requirement.

VII. Collocation (¶ 66)

Michigan law[7] requires incumbent providers serving more than 250,000 end-users to make available virtual collocation arrangements for equipment necessary for efficient interconnection of unbundled services. Other forms of interconnection, including physical collocation required by the 1996 Act are also permissible under Michigan law. Michigan Staff

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[6]Sec. 305(b) of Act 179.

[7]Sec. 356 of Act 179.

supports the required availability of these types of arrangements. Michigan Staff also suggests, however, that physical and virtual collocation arrangements required in earlier FCC proceedings did not specifically address how these arrangements could or would be utilized for local interconnection purposes.[8] Considerable effort has been expended on this issue during the last year in Michigan with competitors requesting and the Michigan Commission agreeing that in some cases, a more simple cross-connect arrangement is what must additionally be provided for local interconnection purposes.[9] Further arguments are still pending on this issue in the Michigan Commission's second interconnection proceeding. Michigan Staff suggests that, even if existing physical and virtual collocation arrangements are appropriate for local interconnection purposes, they may include more functions than are needed for local competition and at a higher cost than will permit local competition to become economically viable.

VIII. Unbundled Network Elements (¶ 74)

Michigan law requires that providers of basic local exchange service serving more than

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[8]See page 19, footnote 48 of the FCC's September 17, 1992 Second Notice of Proposed Rulemaking in CC Docket No. 91-141. See also page 4, footnote 8 of the FCC's May 19, 1994 order in CC Docket No. 91-141. Referenced pages are included in this filing as Attachment 4.

[9]See Attachment 5, a Michigan Public Service Commission Order of October 3, 1995 in Case No. U-10647 on this issue.

250,000 end users immediately make available for purchase unbundled loops and ports.[10] In regard to loops in particular, Michigan law requires as a condition of licensure that providers have the ability to provide local service to every person within the geographic area of the license.[11] In the interpretation of the Michigan Commission this includes residential as well as business customers. In Michigan Staff's opinion it is quite unlikely that any newly licensed provider would have the immediate ability to serve many residential areas over its own facilities. The availability of unbundled loops from the incumbent provider makes this possible and brings the potential for competition to a much greater portion of the population. Therefore, Michigan Staff agrees that, at a minimum, ports and more critically loops must be made available (¶ 94). Proposals for subloop unbundling or other unbundling requests should be addressed according to the procedures discussed in Section V above (¶ 97).

Michigan law also requires that the port which must be offered by incumbent providers include the broader definition suggested by the FCC in its notice (¶ 101). Specifically, Michigan law defines a port as follows:

> "'Port' except for the loop, means the entirety of local exchange, including dial tone, a telephone number, switching software, local calling, and access to directory assistance, a white pages listing, operator services, and interexchange and intra-LATA toll carriers."[12]

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[10]Sec. 355(1) of Act 179.

[11]Sec. 302(1)(a) of Act 179.

[12]Sec. 102(x) of Act 179.

Although this broader definition of a port must under Michigan law be priced at its total service long run incremental cost (TSLRIC) during 1996, nothing in Michigan law appears to limit the ability of a provider to offer the port in a number of components as long as all components are offered and each component is priced at its TSLRIC. In Michigan Staff's opinion this broader definition permits newly licensed providers to purchase, for example, not only "dial tone" but usage on that line as well. This broader definition is therefore appropriate.

Finally, in regard to data base access (¶ 109), Michigan law requires and Michigan Commission orders require non-discriminatory access to databases needed for the provision of basic local exchange service. Michigan law includes examples of required databases.

> "Providers of basic local exchange service shall allow access by other providers, on a nondiscriminatory basis and in a timely and accurate manner, to data bases, including, but not limited to, the line information data base (LIDB), the 800 data base, and other information necessary to complete a call within the exchange, either on terms and conditions as the providers may agree or as otherwise ordered by the Commission."[13]

Michigan Staff emphasizes that nondiscriminatory access must recognize the same use of the service. For example, nondiscriminatory access to directory listings would require that the same rates, terms and conditions be available for all providers who serve a local calling area - whether competitive or non-competitive. It is not relevant what another purchaser must pay for statewide listings to be utilized for other commercial purposes. The similarly situated

[13]Sec. 363 of Act 179.

provider is the appropriate consideration when discrimination is to be judged.

IX. Pricing of Interconnection, Collocation, and Unbundled Network Elements (¶117)

For the reasons discussed above in Section II, Michigan Staff proposes that only broad pricing principles be specified by the FCC which are required for adherence to the requirements of the 1996 Act (¶ 118). It is even more important in the pricing area that states be permitted the ability to take account of the pricing of other local services in the state in establishing the prices for unbundled network components. Michigan law already complies with the 1996 Act in this regard and with many of the proposals made by the FCC in its Notice.

Michigan law and Michigan Commission orders have addressed pricing principles on a number of occasions. TSLRIC is the basis for many of the elements of the Michigan law. For example, during 1996 loops, ports, and termination rates must either remain at levels established by the Michigan Commission in its original interconnection order, or must be priced at TSLRIC levels.

The definition of TSLRIC (¶ 126) adopted by the Michigan Commission in September, 1994 was codified into Michigan law last year. It specifies the following:

> "'Total service long run incremental cost' means, given current service demand, including associated costs of every component necessary to provide the service, 1 of the following:
>
> (i) The total forward-looking cost of a telecommunication service, relevant group of services, or basic network component,

> using current least cost technology that would be required if the provider had never offered the service.
>
> (ii) The total cost that the provider would incur if the provider were to initially offer the service, group of services, or basic network component."[14]

Common overheads and residual costs are not included in this definition (¶ 126), but development and use of unseparated costs are (¶120). Michigan Staff would note in particular that inclusion of residual costs in an attempt to "work back" to embedded investment is in conflict with the provisions of the 1996 Act prohibiting use and reference to traditional rate of return pricing. Inclusion of such costs in a TSLRIC definition is therefore inappropriate.

As competitive providers enter local exchange telephone markets, prices of services at both retail and wholesale level become important. If retail services are priced too far above cost, inefficiency may result. If retail services are priced below cost, efficient entry of competitors may be thwarted

At the wholesale level, pricing of network components is extremely important for the viability of competition for two reasons. First, the incumbent produces essential or bottleneck functions that will be used by entrants to provide service. These essential or bottleneck functions cannot be produced by entrants or obtained on reasonable terms from other sources. Second, the initial phase of retail competition will be based largely on resale of the incumbent's services. If network components are priced too high, a barrier to competitive

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[14]Sec. 102(ff) of Act 179.

entry may be created. If network components are priced too low, the incumbent may be harmed, as resellers may purchase unbundled services and rebundle them at less than the incumbent's total cost. To prevent anticompetitive pricing, cross-subsidies, and harm to the incumbent, prices must be based on the cost of each element.

Consideration of geographic rate deaveraging for interconnection components (¶ 133) should be left to the judgment of each individual state. In Michigan Staff's opinion, any proposed rate deaveraging must be supported by cost variations as presented by the provider. If no cost studies exist to support such rate variation, deaveraging may result in discriminatory rates, contrary to both state and federal law. In addition, although Michigan law appears to permit some types of rate deaveraging,[15] the 1996 Act appears to prohibit rate deaveraging in some cases.[16] There may be considerable support for a position that if an end-user service cannot be deaveraged, the interconnection components which are utilized in the provision of that service should not be deaveraged as well. States must have the ability to review these factors and establish appropriate rules for the customers in their states.

Rate deaveraging should be permitted only when selective competitive entry warrants such flexibility, subject to a TSLRIC floor constraint. There may also be non-competitive situations that warrant rate deaveraging, such as when a service has wide cost variances, or when averaging may reduce subscription levels, or when deaveraging could provide more

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[15]The 1995 amendments to Act 179 deleted the requirement that toll rates be averaged.

[16]1996 Act, Sec. 254(g).

accurate market signals due to cost variation.

The advent of competition creates pressure to deaverage local rates to reflect underlying costs. However, the network benefits of maintaining or increasing penetration levels indicate that there may be instances where averaging or other forms of support may be appropriate. Rate averaging will probably not be sustainable in a competitive environment in the long run. Regulators should consider deaveraging based upon market conditions and cost justification. If new carriers are allowed to enter only low cost areas, then the market rates for these areas will fall. If new entrants are required to serve a broad area at an averaged rate, this may effectively block competitive entry and deny consumers in low cost areas the benefits of competition. One way to sustain rate averaging in a competitive environment would be through a system of subsidized rate support.

In regard to appropriate rate ceilings (¶ 134) the bundled service price of the incumbent must represent the ceiling rate for the combined unbundled components. Otherwise, competition against the incumbent services cannot develop. Imputation requirements in fact already exist in the Michigan law.[17] Whether such imputation tests are required on a rate, service or service category basis will be addressed by the Michigan Commission in the very near future. The flexibility to address the issues involved in this determination can easily remain with the state commissions and still assure compliance with the 1996 Act. In further regard to the rate ceiling issue it must be recognized that in order for a provider to compete, it

[17]Sec. 362 of Act 179.

must of course have the ability to recover its own direct costs in the service price it offers its customers, as well as the costs it must pay to the incumbent providers for interconnection components. Therefore, in order to compete, each unbundled component must be priced above TSLRIC but well below the bundled service of the incumbent provider. Michigan Staff also concurs that in any calculation of a ceiling price for unbundled loops (¶ 141), there must be recognition that unseparated costs of that loop are presently recovered in toll rates, local rates, the carrier common line charge and the end user common line charge. Arguments to ignore the interstate recovery of these costs through the end user common line charge were presented to and rejected by the Michigan Commission in its original interconnection proceeding.[18]

Requirements that prices cover TSLRIC are still appropriate regardless of the current pricing of end user services (¶ 143). Under Michigan law, providers are permitted to restructure all regulated service rates in line with determined TSLRIC and by January 1, 2000, must in fact do so.[19] Universal service issues should be considered separately (see Section X below).

Proposals to structure prices in the same manner in which costs are incurred (e.g., usage based recovery for usage based costs) (¶ 150) should be left to the states. The Michigan Legislature, for example, in its consideration of the public interest of the people of the state of

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[18]See page 57 of Attachment 1.

[19]Sec. 304a.(2) of Act 179.

Michigan, has required providers of basic local exchange service to offer service options which include a certain level of local calling in the flat rated monthly charges that are assessed.[20] Considerable public debate is ongoing in this area where residential customers have voiced a very strong desire for such options. Additionally, it may not be possible for some providers to bill in a way where pricing structures totally reflect the manner in which the costs are incurred. Options for usage based pricing for every usage based cost in this area may be totally inappropriate and technically infeasible. Pricing options must not prohibit competitors or a state commission from considering factors such as these.

In Michigan Staff's opinion, the rate discrimination issue between customers must be rather strictly defined (¶ 156). As discussed in Section VIII above, similarly situated customers must be at the heart of the discrimination assessment. In addition, providers should not be permitted to package numerous desired components to one provider and price these services totally differently to another provider simply because one of fifty components is not desired or needed by the second provider. Again, permissible discrimination must have its basis in cost differences.

As discussed briefly in Section IV above, any existing contracts which are not in compliance with the broad parameters of the policies of the 1996 Act and the FCC's rules must be brought into compliance to assure non-discriminatory treatment (¶157). A transition period may be appropriate, however, to avoid rate shock effects in some instances.

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[20]Sec. 304(b) of Act 179.

X. Universal Service (¶ 145)

Universal service considerations should not prevent or delay the granting of local service certification. Changes to universal service and high-cost funding mechanisms may need to be considered separately if there is concern that basic rates may rise as a result of competitive entry. Basic rate increases could occur due to several factors, including the movement to more cost-based or deaveraged rates, or loss of economies of scale resulting from reduced demand. Universal service and high-cost fund subsidies should be recovered through competitively neutral mechanisms.

The introduction of competition into the local telecommunications market may require changes to the current implicit and explicit mechanisms used to achieve the existing level of universal service. As has already been observed in the long distance market and in certain local business markets, large customer demands, varying access rates, and cost differences have caused some deaveraging, bypass and rate arbitrage.

In order to be fair to all service providers and to avoid having high-cost fund assistance be a competitive advantage or obstacle, all similarly situated telecommunications providers should be contributors to the fund. Similarly, the allocation mechanism should assess the widest possible array of services to avoid creating competitive advantages/obstacles among various service categories or unnecessarily creating a bypass incentive.

XI. Interexchange Services, Commercial Mobile Radio Services, and Non-Competing Neighboring LECs (¶ 158)

In Michigan Staff's opinion, determination of whether mobile, cellular or PCS providers offer basic local exchange service (¶ 168) is dependent upon the service itself rather than the medium over which it is offered. For example, if the only technically feasible and economically viable alternative to provide local service in a particular geographic area is through wireless technology, this service should be considered basic local service -- regardless of the technology used to provide it. For the most part, however, where such services are not the only nor, in fact, the primary means of providing service they should not be the subject of interconnection requirements being discussed herein. It is the Michigan Staff's belief that only if a provider is licensed as a provider of basic local exchange service and assumes the applicable obligations in a given state for that type of provider, would it be eligible for the appropriate aspects of local interconnection, such as local call termination compensation.

Whether non-competing LECs should be bound by interconnection requirements (¶ 170) is a different situation, however. In Michigan Staff's opinion, non-competing LECs utilize the exact same equipment in exactly the same way as competing LECs in the provisioning of local calling (especially extended area service arrangements). These LECs should be required to pay the same rates for use of incumbent LEC facilities as competing providers must pay. Under Michigan and federal law, small providers are not required to offer the same type of interconnection services (although they are permitted to do so). Neither law, however, permits some LECs to be charged for use of facilities while others are not. The

distinction between a small and large provider should not be considered to mean a distinction between competing and non-competing provider. In Michigan Staff's opinion, the latter type of distinction does not exist in Michigan law. Therefore, for example, if Ameritech Michigan charges a competitive provider to terminate its local calls, it must also charge a non-competing provider or an affiliate to terminate its calls as well. Without this treatment, unreasonable discrimination would occur. At the time that interstate toll competition began, contractual arrangements between the Bell Operating Companies and AT&T were terminated and services were offered via non-discriminatory, tariffed access charges. At the time that intraLATA toll competition began, contractual arrangements between the Bell Operating Companies and other LECs were terminated and services were offered via non-discriminatory, tariffed access charges. Now as local competition evolves, contractual arrangements between incumbent providers must be terminated and services offered via non-discriminatory, tariffed local access charges. The non-competing provider of yesterday is the competing provider of today (e.g., Ameritech Communications Inc. has pending before the Michigan Commission a license application to serve all Ameritech Michigan and GTE exchanges in the state). The same facilities are utilized. Public access to the same rates, terms and conditions is necessary.

XII. Resale Obligations of Incumbent LECs (¶ 172)

In Michigan Staff's opinion, resale prohibitions are not permissible under federal law. In general, Michigan law also prohibits resale restrictions. However, it permits but does not

require the resale of promotions.[21] The 1996 Act is therefore broader in its scope but is not in conflict with Michigan law. Resale restrictions must be removed from all offerings of the incumbent providers. Resale limitations, however, may be appropriate in some instances (¶176) and are permissible under both state[22] and federal law. For example, Michigan believes it is appropriate to limit the resale of residential service to residential customers. This is particularly appropriate in Michigan since flat-rated service options must be offered to residential customers but not to business customers. Therefore, the ability to purchase residential service from an incumbent provider in order to resell it to business customers should be prohibited. Similarly, lifeline services must be resold only to eligible customers. The incumbent provider is eligible under FCC rules and Michigan law[23] to receive reimbursement for lifeline discounts but the ability to restrict the resale of that service to only lifeline eligible customers must also be permitted.

The determination of wholesale rates is addressed more broadly in the 1996 Act but these provisions are not in conflict with Michigan law (¶ 180). Michigan law requires that wholesale rates be offered for basic local exchange service and that wholesale rates be computed by subtracting avoided costs from current retail rates.[24] The 1996 Act requires a

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[21]Sec. 357(3)(a).

[22]Sec. 357(2) of Act 179.

[23]Sec. 316(4) of Act 179.

[24]Sec. 357(4) of Act 179.

similar determination of wholesale rates but on all the service offerings of the incumbent provider. Michigan Staff suggests that this latter determination of wholesale rates proceed and that it is not in conflict with Michigan law. Providers have the initial ability to determine appropriate wholesale rates. Only if agreement cannot be reached, is it necessary for the regulators to intervene and establish rates according to the provisions of applicable law.

XIII. Transport and Termination (¶230)

As discussed in Section X above, competing and non-competing LECs must pay non-discriminatory rates for the use of incumbent LEC facilities. Local termination charges should be based upon TSLRIC studies. Termination charges should be based on costs incurred. The coexistence of local termination charges and flat rate pricing of local usage is a difficult problem and must be assessed on a state by state basis. The local termination rate should be balanced against flat rate usage in order to equalize the minute of use traffic costs between the entrant and the incumbent.

Rate parity between traffic sensitive local and toll termination charges, if cost justified, could reduce billing expenses and remove arbitrage opportunities. Whether differing local and toll rates or a common termination rate are used, network traffic should ultimately be monitored. At a minimum, traffic measurement would need to occur if overall inter-carrier minutes or distances are out of balance or if there are different rates for local and toll traffic.